IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELALTE SIDE

APPEAL FROM ORDER NO.904 OF 2005
WITH
CIVIL APPLICATION NO.1058 OF 2005

Mrs.Rashidabi Mehmoodali Sayyed & Ors. ...Appellants.
Vs.
Dr.Shakeela Yasinali Sayyed & Ors. ...Respondents.

....

Mr. A.R. Shaikh for the Appellants.
Mr. Anilkumar Patil for Respondent No.1.

.....

CORAM : DR. D.Y. CHANDRACHUD, J.

November 23, 2005.

P.C.:

The Learned Trial Judge has, by his order impugned in these proceedings, declined to grant interim relief for the appointment of a Receiver in a suit for partition.

Interim relief was initially granted on 5th July 2003 which was operative for a period of one year pending the suit. On 4th July 2004, the original Plaintiff made an application for extension of the order of injunction. The application was disposed of on 22nd March 2005 and the order of injunction has been continued. The First Respondent, the original Defendant, is the widow of Dr.Yasinali

Amirali Sayyed who died on 20th February 2000. The Appellants are the heirs of the deceased's wife and Respondent Nos.3 to 5 are his brothers. The Appellants claim an interest in the estate of the deceased together with Respondent Nos.3 to 5. The First Respondent is a medical doctor. The grievance of the Appellants is that sometime in January 2005, a Leave and Licence Agreement was entered into in respect of a portion of the premises situated in the suit property for a period of 11 months from 15th December 2004 to 14th November 2005. At that point of time, the order of injunction was not in operation. Hence, an application was made before the Trial Court for extension of the order. Counsel appearing on behalf of the First Respondent states on instructions that upon the expiry of the term of licence, the lessee has vacated the premises in his occupation. On behalf of the First Respondent an undertaking is tendered before the Court to the effect that First Respondent shall not create any right, title or interest in respect of the premises in question pending disposal of the suit. It has also been the grievance of the Appellants that one Dr.Mubbashera Ansari is conducting a Dental Clinic in the premises. In paragraph 11 of the affidavit in reply filed before the Trial Court, it is stated that Dr.Mubbashera Ansari is the niece of the First Respondent

and she has been brought up by the First Respondent and the late Dr.Yaseen Ali right from her childhood since they had no children of their own. Hence, it is stated that Dr.Mubbashera Ansari is permitted to conduct her Dental Clinic after she completed her medical education. Counsel appearing on behalf of the First Respondent stated that Dr.Mubbashera Ansari claims no independent interest or title in the premises and there is no creation of any interest in her favour by the First Respondent. It has been stated on behalf of the First Respondent that the First Respondent shall file an undertaking in these terms before the Trial Court within a period of four weeks from today. In that view of the matter, no further directions are necessary. The undertaking tendered before the Court in the aforesaid terms is accepted. The undertaking shall be filed before the Trial Court as directed hereinabove within four weeks from today.

The Learned Trial Judge has justifiably declined the prayer for the appointment of the Receiver. The order does not call for interference.

The Appeal from Order is disposed of.

In view of the disposal of the appeal, the Civil Application does not survive and is accordingly disposed of.

....